

Date Issued: May 22, 1987 (AGO 87-08)

Requested by: Honorable Ben Meier
Secretary of State

- QUESTION PRESENTED -

Whether a petition seeking the referral of a part of a legislative act is in compliance with N.D. Constitution Article III Section 2 and N.D.C.C. section 16.1-01-09 where only those parts of the legislative act sought to be referred are included as the full text of the measure.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a petition seeking the referral of a part of a legislative act is in compliance with the N.D. Constitution Article III, Section 2, and N.D.C.C. section 16.1-01-09 where only those parts of the legislative act sought to be referred are included as the full text of the measure.

- ANALYSIS -

According to your letter, there is an interest in referring portions of Senate Bill No. 2557 as passed by the 1987 Legislative Assembly. Specifically, there is an interest in referring sections 2, 3, and 5 of this particular bill. The other portions of this bill are not intended to be the subject of a referral.

N.D. Constitution Article III, Section 1, reserves to the people the power to approve or reject legislative acts or parts thereof by the referendum. N.D.C.C. section 16.1-01-09 provides for the form of initiative, referendum, or recall petitions. A petition form is provided for in this particular statute. The statute requires referendum petitions to be in "substantially" the statutory form provided.

Among the items to be included in the referendum petition as required by N.D. Constitution Article III, Section 2 and N.D.C.C. section 16.1-01-09, is the full text of the measure. The statute defines "full text of the measure" to mean the bill as passed by the Legislative Assembly excluding the session and sponsor identification. Provision is not made in this definition to cover the situation where a portion of the legislative act is sought to be referred.

The N.D. Supreme Court has not had the occasion to determine the scope of the phrase "full text of the measure" as it applies to an attempt to refer parts of a legislative act.

However, in other cases dealing with this phrase as applied to initiative petitions, the court has concluded that the requirement that the petition contain the full text of the measure is to ensure that the average voter knows what it is he is doing when he signs the petition or votes on the measure.

The average voter does not have conveniently at hand the text

of the Constitution or the statutes of this state; if, therefore, he is to have an opportunity to know fully and intelligently what he is doing when he signs or declines to sign a petition, or votes on a proposed amendment, it is only if the full text of the proposed amendment, it is only if the full text of the proposed amendment to the Constitution be inserted in the petition, and embodied in the publicity pamphlet sent him, that he will be able to do so.

Dyer v. Hall 199 N.W. 754, 756 (N.D. 1924). In Dyer the court concluded that the purpose of the requirement that the petition contain the full text of the measure was to "obviate all uncertainty as to the subject matter dealt with in the Constitution, and to lessen the possibility of fraud or imposition in procuring signatures." Id. at 757.

To strictly comply with the requirement that the referendum petition contain the full text of the entire measure despite the fact that the referral is a partial referral would promote uncertainty among the voters and the signers of the petition and would possibly cause fraud in procuring signatures upon the petition. If Senate Bill No. 2557 were reprinted in its entirety as the full text of the measure, voters would possibly assume the entire bill is being referred when in reality only section 2, 3, and 5 of the bill are being referred. Thus, people asked to sign the petition or to possibly vote on the measure would have doubt as to the effect of their signature or vote, causing confusion and uncertainty. In addition, persons may agree to sign or refuse to sign the petition on the basis of the complete restatement of the entire bill within the petition leading one to conclude that the entire bill is being referred. Obviously, such occurrences would violate the clear intent of the constitutional requirement that each referral and initiative petition contain a full text of the measure as declared by our N.D. Supreme Court.

The argument may be made that the full text of the measure should be reprinted along with explanatory information concerning the scope of the referral. Such explanatory material would appear to be in violation, however, of the pronouncements of our state supreme court prohibiting extraneous and impermissible statements within referral petitions. Haugland v. Meier 335 N.W. 2d. 809 (N.D. 1983); Lips v. Meier 336 N.W. 2d. 346 (N.D. 1983).

In reaching an opinion as to what constitutes the full text of the measure in a partially referred measure, I have considered the authority of the people to refer parts of legislative acts provided for in N.D. Constitution Article III, Section 1. I have also considered the constitutional intent of the "full text of the measure" requirement as indicated by the N.D. Supreme Court in Dyer v. Hall. Finally, I note that N.D.C.C. section 16.1-01-09, providing for the form of referendum petitions, requires such petitions to be in "substantially" the statutory form as provided.

With these considerations in mind, it is my opinion that the full text of the partially referred measure must contain the bill as passed by the Legislative Assembly excluding the session and sponsor identification and excluding other parts of the bill not sought to be referred.

A 1979 Attorney General's opinion suggest that an entire bill need not be printed as the "full text of the measure" where the part of the bill being referred is "clearly severable and distinct" from the entire bill. 1979 N.D. Op. Attorney General 101, 104. Although the current status of the 1979 opinion is questionable, due to intervening case law and statutory changes, its application to this issue would produce a conclusion identical to this opinion's conclusion.

The referendum petition attached to your letter seeking referral of sections 2, 3, and 5 of Senate Bill No. 2557 has been reviewed. The full text of the referred portion of the measure as included within this petition does include the bill as passed by the Legislative Assembly excluding the session and sponsor identification and excluding those sections of the bill which are not sought to be referred by the interested parties. It is my opinion that the petition is in "substantially" the form provided for by N.D.C.C. section 16.1-01-09 and satisfies the requirement of N.D. Constitution Article III, Section 2 that the petition contain the full text of the measure.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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